

APPEAL PROCEDURES OF THE DIVISION OF THE STATE

ARCHITECT ADVISORY BOARD

From time to time, differences of opinion will surface between the Division of the State Architect (DSA) and its clients relating to matters concerning building standards as they apply to the planning, construction or alteration of building projects. Before the differences escalate into a more formal appeal process before the DSA Advisory Board (Board), clients may ask DSA for reconsideration through an internal second-tiered review process. DSA is dedicated to keeping open lines of communication between staff and clients and discussion of differences is encouraged.

To initiate a second-tiered review process one of DSA's Regional Offices, simply ask that the decision rendered by a DSA Regional office staff member be reviewed by the Regional office's supervisory chain of command up to the Regional Manager, if necessary. If still not satisfied with the decision or action, then the client may refer the matter to DSA Headquarters, Chief and Regional Operations.

To initiate a second-tiered review process in DSA Headquarters, ask that the decision rendered by a DSA Headquarters staff member be reviewed by Headquarters supervisory chain of command up to the Deputy to the State Architect, if necessary.

It is anticipated that approximately 95% of the differences of opinion can be resolved internal to DSA. However, in the event of continuing disagreement with a decision of DSA after exhausting the internal review process, an appeal may be made to the DSA Advisory Board, formerly the Field Act Advisory Board. Matters brought into the appeals process are generally in "gray" areas, where codes and regulations may not be particularly clear.

The Board's purpose is to advise the State Architect on the administration of the Field Act (Education Code, Sections 17280 et seq. and Sections 81130 et seq.). The Board also serves as a board of appeals in all matters relating to the administration and enforcement of building standards for the design, construction, alteration, seismic safety, fire and panic safety and alternate means of protection determinations of public buildings under the jurisdiction of the State Architect. Further, the Board acts as a board of appeals in matters relating to building projects involving the accessibility requirements of Title 24, California Code of Regulations.

To initiate the Board's appeal process, a request for an informal conference can be made to the Executive Director of the Board. Within 10 days, the Executive Director would convene the conference with representatives of the appellant and the State Architect or his/her designee(s) present. A decision would be made by the State Architect following the conference that would confirm, modify, or reverse the original decision in question.

If the appellant disagrees with the decision, a formal hearing may be requested of the Board. An appeals committee of the Board would hold a public hearing on the appeal after the receipt of documents supporting the request for an appeal hearing. Such committees are appointed by the Board's Chair and are composed of Board members and others (if needed) who have expertise in the subject area of the appeal matter. At the hearing, the appellant has the right to counsel, to submit documentary evidence and exhibits and to have witnesses appear and testify although the hearing is not conducted in accordance with strict rules of evidence or courtroom procedures.

The appeals committee conducts the formal hearing and if all parties agree to the committee's decision in writing, the appeal action is terminated. If all parties do not agree with the decision, the committee transmits the issue to the full Board for consideration. The Board would hear the final arguments from the appellant and render a recommended decision on the appeal. The Board will notify the Director of the Department of General Services (DGS) who may affirm, reverse or amend the ruling, order, decision or act being appealed.

Should the appellant determine he or she has been adversely affected by the decision of the DGS Director, the appellant may further appeal the issue for resolution to the California Building Standards Commission.

The time period outlined in the appeal process are the maximum times allowed. However, every effort is made by DSA and the Board to expedite the process and to resolve the matter if possible, at the earliest stage of the process. Further, besides fostering an organized and expeditious way to resolve problems, the appeal process can bring to light issues that may ultimately lead to code, regulatory, or operational changes. DSA clients are encouraged to use this process without concern of compromising future working relationships with any member of the DSA organization.

If you have any further questions or want more information about DSA's appeal process, please contact:

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Division of the State Architect Appeal Process

GOAL: To resolve differences of opinion with clients at the lowest level possible in an expeditious manner.

Regional Office (internal process)

- Decision made in plan or construction review, client does not agree.*
- Client may ask for second-tiered review process.**
- Decision would be reviewed by lead/supervisor, client still does not agree.
- Regional Office Manager would review, client does not agree.
- DSA Headquarters, Chief of Regional Operations would review, client does not agree.
- Deputy to the State Architect would review, client still does not agree.
- Client could appeal to the DSA Advisory Board.

Headquarters Office (internal process)

- Decision made by staff member, client does not agree.
- Client may ask for second-tiered review process.
- Decision would be reviewed by supervisor, client does not agree.
- Decision would be reviewed by Deputy to the State Architect, client does not agree.
- Client may appeal to the DSA Advisory Board.

Advisory Board (formal process)

- Client writes letter to Board's Exec. Director, who convenes an informal conference with the appellant and the State Architect or his/her designee(s) present, client does not agree.
- An appeals committee of the Board is appointed and composed of Board members and others (if needed) who have expertise in the subject area of the appeal matter.
- Appeals committee hears appeal and renders decision, client does not agree
- Client may request an appeal hearing before the entire Board.
- Board hears appeal and recommends a decision to the DGS Director, client does not agree.
- Client may request an appeal hearing before the California Building Standards Commission (if the matter involves a code enforcement issue).

*If client agrees at any point, process is terminated.

**Reviews may include consultation with other Regional offices and/or other enforcement agencies. All appealed decisions will be recorded in writing.

APPEALS TO THE DIVISION OF THE STATE ARCHITECT

ADVISORY BOARD

1. Appeals.

(a) The Division of the State Architect Advisory (DSA) Board (Board) shall act as a board of appeals in all matters relating to the administration and enforcement of building standards for the design, construction, or alteration of public building projects under the jurisdiction of the Division of the State Architect. This may include: seismic safety, fire and life safety and alternate means of protection determinations. Further, the Board acts as a board of appeals in matters relating to building projects under the jurisdiction of DSA involving accessibility requirements (schools and public buildings).

(b) In the event of disagreement with the rulings, orders, decisions or acts of the DSA acting within the scope of the Field Act (Education Code, Sections 17280 et seq. and Sections 81130 et seq.) or accessibility requirements of Title 24, California Code of Regulations, an appeal may be made by school boards, architects, structural engineers, or other interested parties, hereafter known as the appellant to the Board.

(c) Such appeals shall be considered by the Board only following an informal conference.

2. Informal Conference.

(a) Within 3 months of a ruling, order, decision or action of the DSA, the appellant may issue a written request for an informal conference upon such ruling, order, decision or action to the Executive Director of the Board.

(b) Within 5 days of receipt of a written request for an informal conference, the

Executive Director shall give notice of the date, time and place of such conference to review the ruling, order, decision or action being questioned.

(c) The informal conference shall be held within 10 days of receipt of the written request for an informal conference.

(d) The informal conference shall be in a convenient place mutually agreeable to the parties.

(e) The Executive Director, or his/her designee, shall conduct the informal conference. Parties to such conference may include the appellant, architect and engineers and other appropriate consultants under contraction to the appellant and the appellant's legal counsel. The State Architect, or his/her designee(s) and legal counsel may attend the conference.

(f) The purpose of the informal conference shall be to discuss the ruling, order, decision or action of the DSA with the intent to resolve the issue.

(g) Within 7 days following the informal conference, the DSA shall notify the appellant, in writing, as to the DSA's decision on the ruling, order, or action. Such action shall be to confirm, modify, or reverse the original ruling, order, decision or action.

3. Formal Hearing Request

(a) If the appellant wishes to continue an appeal after the DSA's decision following the informal conference, a formal hearing may be requested of the Board. The appellant shall submit a written request for an appeal to the Executive Director of the Board within 14 days of receipt of the results of the informal conference.

(b) The request should include documents supporting the request for a formal hearing

before the Board. Such documents shall be submitted to the Board and shall contain specific information regarding the DSA's ruling, order, decision or action and the basis for the appeal.

4. Appeal Hearings.

(a) The Board, or a committee of the Board, appointed by the Chair of the Board, shall act as the hearing body and shall conduct a public hearing on the appeal.

(b) The Chair of the Board shall call a hearing on an appeal. The hearing shall be convened at a location selected by the Chair.

(c) The hearing shall be held within 30 days of the receipt of documents supporting the request for an appeal hearing. Within 10 days of the Office's receipt of the supporting documentation, the parties to the appeal shall be notified in writing of the time and place of the hearing and the composition of the hearing body.

(d) The Chair of the Board shall develop, and have sent to each member, an agenda listing the matters to be considered and, insofar as practical, copies of all written reports which are to be presented to the Board. The agenda and written reports shall be provided to the members of the Board at least 10 days before the date of the hearing.

(e) If a committee of the Board is appointed to hear the appeal, at least five voting members of the Board shall be appointed to such committee. Non-Board members may be appointed by the Chair to serve on an appeals committee. The Chair of the hearing committee shall be a Board member appointed by the Chair of the Board. The Chair of the Board shall not chair an appeal committee. The appeal shall be heard by at least three of the Board members appointed to an appeal committee. The decision shall bear the endorsement of a simple majority of the committee members present.

(f) If the full Board is to hear the appeal, at least nine voting members of the Board shall be present to hear the matter. The decision shall bear the endorsement of a simple majority of the Board members present.

(g) The proceedings shall be recorded by tape recorder. Transcripts shall be made available to anyone making a request therefore upon deposit with the Board of the amount of money that the Executive Director has determined. In addition to the tape recording of the proceedings, decisions of the Board or a committee of the Board shall be recorded by stenographic recording and shown in the minutes of the meeting. The minutes shall show how each Board or committee member voted on the decision.

(h) The appellant may, at his own expense, arrange for stenographic recording and transcription of the hearings.

5. Rights of the Appellant.

(a) The appellant shall have the right to counsel, to submit documentary evidence and exhibits, and to have witnesses appear and testify. These rights shall be executed by the appellant at the appellant's own expense.

(b) The appellant shall have the right to question representatives of DSA and other witnesses presenting testimony or documents in the hearing.

(c) The appellant shall have the right to question potential conflicts of interest of any member of the Board or committee of the Board hearing an appeal. The Chair of the hearing will rule on such potential conflict and the ruling shall be entered in the record of the hearing.

6. Appeal Hearing Procedure.

(a) An appeal hearing conducted by the Board or a committee of the Board shall not be conducted in accordance with strict rules of evidence or courtroom procedure. During the hearing, the Chair may accept into the record without formal proof any generally

accepted technical or scientific matter related to seismic, architectural, structural, mechanical, electrical, fire and life safety of school facilities. Hearsay evidence may be allowed for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support the findings.

(b) The Chair of the hearing shall determine the order of witnesses and presentation and introduction of documents, evidence and exhibits into the record of the hearing. The Chair may impose reasonable time limits, rule on admissibility of evidence, maintain decorum in the hearings, call recesses, deliberate in closed session, and rule on continuation of the hearings.

(c) The Chair may request counsel from the Department of General Services for advice on points of law.

(d) Prior to the closing of the hearing, the hearing Chair shall announce either of the following:

- (1) The recommended decision of the committee of the Board, or
- (2) The recommended decision of the Board.

7. Decision on Appeal.

(a) Decision on an appeal heard by a committee of the Board shall be reached as follows:

(1) If all parties agree to the recommended decision by a committee of the Board, the agreement and the names of parties to the appeal shall be entered in the record. The appeal action shall be considered terminated when all parties to the appeal have stipulated to the agreement in writing.

(2) If all parties to the appeal do not agree with the decision recommended by a committee, the findings of fact, supporting documents, evidence, exhibits and decision recommended by the committee shall be transmitted to the Board.

(3) Within 30 days after the findings of fact, supporting documents, evidence exhibits and a recommended decision are received, the Board shall hear final arguments from the appellant and render a decision on the appeal. The appellant, the appellant's counsel or the appellant's representatives may not introduce new evidence without approval of the Board.

(b) Decision on an appeal heard by or referred to the Board shall be reached as follows:

(1) The Board may affirm, reverse or amend the ruling, order, decision or action being appealed or remand the issue for further study.

(2) The Board shall render a recommended decision in public meeting and transmit such decision in writing to each party to the appeal hearing within 15 days after the close of the hearing.

(3) If the Board does not remand the issues at appeal for further study, the Board shall transmit its recommended decision in writing to the Director of the Department of General Services within 5 days of the conclusion of the public hearing.

(4) If the Board remands all or a portion of the issues at appeal for further study, the Board shall specify the issues or matters to be studied, who is to study the issues and completion dates for such further study.

(5) Findings and recommendations from further study will be transmitted to all parties to the action prior to the Board's public hearing for decision.

(6) Within 30 days of receipt of the findings and recommendations from further study of the issues, the Board shall convene a public hearing to consider the findings and recommendations and arguments from the appellant or the appellant's representatives. The recommended decision of the Board shall be announced in a public hearing and transmitted in writing to the Director of the Department of General Services within 5 days of

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the conclusion of the public hearing.

(7) Within 10 days of receiving the Board's recommended decision, the Director may affirm, reverse or amend the ruling, order, decision or action being appealed. The decision of the Director shall become effective immediately upon announcement by the Director.

(a) Should the appellant determine he or she has been adversely affected by the decision of the Board, the appellant may further appeal the issue for resolution to the California Building Standards Commission.

(8) If the Board identifies a problem with a code, regulation, or practice of DSA, a recommendation may be made to the State Architect for amendment or change consideration.